

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE
AND
THE _____ COUNTY DISTRICT ATTORNEY'S OFFICE

This agreement ("MOU") by and between the **New York State Department of Taxation and Finance** ("DTF") and the _____ **County District Attorney's Office** (the "DA's Office") is to be effective as of the date signed by both parties.

WHEREAS, the State of New York ("State") and DTF share with the District Attorney's Office a strong interest in robust enforcement of the tax laws, effective deterrence so as to increase voluntary compliance with those laws, and the recovery of revenues properly due the State and other units of government; and

WHEREAS, the State has, through its Division of Criminal Justice Services ("DCJS"), offered a contract and grant award to the DA's Office (the "grant") under the Crimes Against Revenue Program ("CARP") for the period from January 1, 2014, to December 31, 2014; and

WHEREAS, the DA's Office has sought to accept that offer and has applied for the grant through the DCJS Grants Management System, and it is a condition of the grant, as set forth in the contract, that the DA's Office enter into this MOU with DTF;

Now, **THEREFORE**, DTF and the DA's Office hereby agree as follows:

I. Purpose and principles

This agreement is intended to set forth roles and responsibilities, as between the parties, with respect to the investigation and prosecution of tax crimes and other fraud that can adversely affect government revenues. The prosecutorial function is the responsibility of the DA's Office, as dictated by the Constitution and laws of this State. The parties to this MOU recognize and acknowledge that the District Attorney's responsibility and discretion to prosecute crimes in _____ County, as derived from the Constitution and laws of this State, remain unaffected by any provision in this MOU, and that DTF cannot require the DA's Office to exercise its prosecutorial discretion in any particular way. However, the DA's Office, by accepting the grant and entering into this MOU, agrees to abide by the terms thereof, and acknowledges and agrees that noncompliance with those terms may result in diminution or denial of grant funds to be provided.

II. Definitions of terms

- A. "Referral" shall mean a request by the Commissioner of DTF, or by an authorized designee on behalf of the Commissioner, that in a particular matter, the DA's Office institute an action or proceeding relating to allegations of violations of the tax laws or tax obligations.
- B. "Prosecutor's Request" shall mean a written request by a prosecutor in the DA's Office that DTF make a Referral to the DA's Office in a particular matter.
- C. "Tax crime" shall mean any crime defined in the Tax Law, and also any crime arising from violation of obligations under the Tax Law.

III. Liaison

Each party will designate a member of its legal staff to serve as the primary liaison with the other party, and will notify the other party as to any changes in its designated liaison.

IV. Prosecutors' requests

- A. The DA's Office shall direct each Prosecutor's Request to the DTF liaison, with a copy to the relevant district office of the Criminal Investigations Division of DTF.
- B. A Prosecutor's Request should include reasons to believe that it would be appropriate for the DA's Office to investigate or prosecute one or more tax crimes, and a representation that such information will in fact be used to investigate at least one potential tax crime for possible prosecution.
- C. Before issuing a grand jury subpoena to DTF, the DA's Office will, unless impracticable, first try to obtain the desired records by Prosecutor's Request, and will allow a reasonable amount of time for DTF to act upon that Prosecutor's Request.
- D. DTF shall make good faith efforts – upon the receipt of sufficient information to reach a determination – to answer a Prosecutor's Request (by making a Referral or a denial of such request) with reasonable promptness.

V. Judicial process

- A. When the DA's Office serves a grand jury subpoena for tax information from DTF, the DA's Office shall include therewith a certification that the subpoena may lawfully require production of the information sought. For example, a subpoena seeking a personal income tax return or portion thereof should include or be accompanied by a certification that in accordance with Tax Law §697(e)(2), the grand jury investigation in question is one under the provisions of article 22 of the Tax Law, and the materials sought are directly involved in and pertinent to such investigation.

- B. Grand jury subpoenas for tax information from DTF should have return dates far enough in the future so that production of responsive materials will not be unduly burdensome. Unless extraordinary circumstances require otherwise, return dates should allow at least two weeks for production in a routine case and correspondingly longer if the matter is more extensive or complicated.
- C. When the DA's Office intends that a DTF employee actually appear in person to testify in response to a grand jury subpoena, the DA's Office, when serving the subpoena, shall provide separate written notice of that requirement.

VI. Referrals

- A. When DTF intends to refer a matter for investigation or prosecution by the DA's Office, then when feasible and appropriate, DTF will, before making an arrest in that matter:
 - 1. Make a Referral of that matter to the DA's Office at least two weeks prior to arrest; provide relevant tax returns to the DA's Office; and make DTF staff available to meet with the DA's Office to provide further information and assistance. In determining the appropriateness and timing of prior Referral, DTF may consider the simplicity of a matter, any urgency, the preferences of the DA's Office, and other factors. In more complex matters, DTF will seek to provide Referrals further in advance. In some matters, such as "sweeps" of vendors selling goods subject to sales tax who do not have a certificate of authority, and routine excise tax enforcement (including arrests resulting from retail inspections, vehicle stops and street encounters), there is no presumption that there will be a Referral prior to arrest.
 - 2. Consult with the DA's Office about how the arrests will be made, including which agency, or agencies jointly, should be responsible for making them. The parties recognize that circumstances can vary from case to case, and the availability of resources can vary from time to time, so there is no general presumption that arrests should be made by any one agency to the exclusion of others. In cases in which DTF ultimately determines that it will make an arrest, it will try to provide advance notice of such arrest to the DA's Office to the extent feasible and appropriate under the circumstances of the case.
 - 3. In good faith consider any general preferences that have been expressed by the DA's office as to procedures for Referrals and arrests, and any concerns expressed by the DA's Office in the particular matter, including concerns as to factual or legal issues and concerns as to time limits under the Criminal Procedure Law.
- B. The DA's Office will timely communicate any decision to decline prosecution of any case referred by DTF, and upon request by DTF will provide the rationale of such decision so that DTF may explore alternative methods of enforcement. The DA's Office

shall typically inform DTF within three months after a Referral, or earlier, as to whether or not it intends to proceed with the Referral. Proceeding with the Referral means further investigating the facts by if necessary and prosecuting the case if appropriate.

VII. Assistance

- A. The DA's Office may, either before or after charges are filed in a particular tax matter, make requests for DTF assistance in that matter (including the designation of a DTF lawyer as a Special Assistant District Attorney) to the DTF liaison or to the relevant district office of the Criminal Investigations Division of DTF.
- B. When assistance is requested, DTF will try to make a prompt response as to whether it will provide the requested assistance.

VIII. Dispositions

In tax cases, DTF represents the victim of the crime and should receive the same consideration as other crime victims. Prior to resolving a tax case, the DA's Office shall confer with DTF and give DTF notice of any proposed resolution. This will help ensure that appropriate restitution is ordered, collected, and directed to the victim, and that there is appropriate consideration of global settlement (that is, of both the defendant's criminal and civil tax liabilities) and whether there should be additional settlement terms to insure future tax compliance. In addition, DTF shall be considered a "victim" as that term is defined in CPL section 380.50(2). The DA's Office recognizes that only DTF can settle the defendant's civil tax liability, and any disposition that purports to resolve the defendant's total tax liability requires the consent of DTF.

Unless there is a global settlement, the DA's Office will place language on the record and in any plea agreement specifically stating that the plea and sentence does not resolve the defendant's total tax liability and DTF may pursue other remedies including, in the case of Sales Tax matters, the suspension and/or revocation any Certificate of Authority.

In tax cases, the District Attorney's offices will endeavor to obtain a plea to a Tax Crime.

IX. Coordination

- A. Regular and open communication between the DA's Office and DTF is an essential component of this agreement.
- B. To maximize a collaborative working relationship between DTF and the DA's Office, the parties will meet monthly or as otherwise agreed to discuss matters of mutual interest including cases referred by DTF to the DA's Office.

X. CARP

- A. The DA's Office will comply with all the conditions of the grant, including the workplan.
- B. The District Attorneys will assist DTF to develop and implement an effective enforcement strategy in order to detect, prosecute and deter revenue crimes.
- C. The District Attorneys will undertake appropriate investigations of allegations at the request of DTF.
- D. The District Attorneys will maintain effective coordination and cooperation with DTF in the investigations and prosecution of revenue crimes.
- E. The DA's Office will regularly communicate to DTF as to its efforts to investigate and prosecute tax crimes, and information as requested, to help DTF assess compliance with this MOU and the performance of the DA's Office under the grant.
- F. Performance under the grant will be measured by an assessment of a variety of factors reflecting efforts to investigate and prosecute revenue crimes during the grant period. The recovery of monetary restitution, while an important consideration, is only one factor to be considered.

XI. Public information

- A. The parties recognize the importance of deterring tax crimes, and other frauds against the government, through successful, appropriate and well-publicized prosecutions.
- B. Either party may issue news releases in any matter. The parties recognize that it is ordinarily the best practice for the parties to confer and cooperate as to whether releases should be issued, and by whom, or whether to join in a single release.

XII. Amendment

This MOU may be amended only in writing and by the agreement of both parties hereto. This MOU supersedes any prior MOU between the parties on the same subjects. The MOU shall continue in effect, as amended from time to time, until and unless a party hereto gives the other party written notice that the MOU shall be terminated on a specified date at least thirty days after the date of such notice.

District Attorney
_____ County

Dated: _____, 2014

Risa S. Sugarman
Deputy Commissioner for Criminal Enforcement
Department of Taxation and Finance

Dated: _____, 2014